



Security Council

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Letter dated 16 February 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 16 December 2004 (S/2004/1001).

The Counter-Terrorism Committee has received the attached fifth report from Bulgaria submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(Signed) Andrey I. Denisov
Chairman

Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism



Annex

Note verbale dated 14 February 2005 from the Permanent Mission of Bulgaria to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Republic of Bulgaria to the United Nations presents its compliments to the Chairman and has the honour to transmit herewith the fifth report in compliance with paragraph 6 of resolution 1373 (2001) on the steps taken to implement that resolution (see enclosure). The report is submitted in response to the questions and comments of the Counter-Terrorism Committee contained in its letter dated 15 November 2004.

Enclosure

Fifth report of the Republic of Bulgaria to the Counter-Terrorism Committee pursuant to paragraph 6 of UN Security Council resolution 1373 of 28 September 2001

In compliance with paragraph 6 of Resolution 1373 (2001) and in response to the Letter from the Chairman of the Counter Terrorism Committee dated 15 November 2004 (Ref. S/AC.40/2004/MS/OC.458), we submit hereby the answers of the Government of Bulgaria to the additional questions raised in relation with the National Report on the measures taken by the Republic of Bulgaria in implementation of Resolution 1373 (2001).

1. Implementation Measures

1.1 With regard to the elaboration of a system of criteria for identifying and reporting financial operations of non-profit organisations, referred to at page 6 of the first report of the Government of Bulgaria, the CTC would be grateful to receive an update on the progress of this effort, as well as an outline of main provisions.

The potential use of non-profit organisations for dealings in the shadow economy and for financing of terrorism requires continuous efforts by the Financial Intelligence Agency (FIA) to develop and enhance the measures - and to improve and update the criteria - for identifying and reporting of operations which raise suspicions for financing of terrorism in accordance with the Law on Measures against Money Laundering (as last amended, State Gazette No.31/04.04.2003) and the Law on Measures against the Financing of Terrorism (as last amended, State Gazette No.31/04.04.2003).

Measures under the Law on Measures against the Financing of Terrorism (LMFT) include freezing of funds and other financial assets or economic resources, and ban on the access to financial services, funds and other financial assets or economic resources available. In such instances FIA immediately notifies the Minister of Interior and the Minister of Finance. In addition, the Financial Intelligence Agency provides further analysis of information obtained pursuant to the Law on Measures against Money Laundering (LMML) with a view to preventing the financing of terrorism. Where financing of terrorism appears to be the case, FIA has the duty to notify the Minister of Interior accordingly.

The Electronic Reporting System on cash payments exceeding BGN 30 000 in accordance with the obligation of the commercial banks under Article 11a of LMML, introduced in 2004, has improved significantly the Agency's analytical capacity. FIA's information system will be upgraded as well (through EU PHARE investment project: "Upgrade of the Technological Environment of the Financial Intelligence Agency").

The implementation of these measures is supplemented by the obligation of all persons under Article 3 (2) and Article 3 (3) of LMML (including the non-profit organisations) to report circumstances of suspected financing of terrorism under Article 9 (3) of LMFT; and by the requirement that all subjects under LMML must update and incorporate in their internal rules criteria for identifying the operations, transactions and customers, suspected in financing of terrorism - Article 9 (4).

The internal rules for the non-profit organisations, developed by experts of FIA, are based on most detailed and concrete criteria consistent with the latest standards in the suppression of the financing of terrorism. They include: the eight special recommendations of the Financial Action Task Force; the recommendations of the EU experts in the framework of the "Twinning Project", which ended in 2004 (EU/PHARE Project "Suppression of Money-Laundering"); the expertise of competent authorities of other states (USA, for instance). The latest modifications in the system of internal rules were introduced in early 2004 and they expanded the range and scope of suspicious operations and transactions, taking into account eventual misuse of for-profit activities by non-profit organisations. The latter include: unreasonable transactions; excessive numbers of financial transfers; transfers between bank accounts of related persons inconsistent with the usual fund-raising operations of non-profit organisations.

In order to raise awareness of the inherent risks in the operation of non-profit organizations and to prevent their misuse as sources for the financing of terrorism, all subjects under LMML/LMFT - including the non-profit organisations - will be involved in a training exercise under the EU/PHARE Twinning Light Programme, starting in 2005. This programme will help to establish a coherent permanent system for the continuous and constant improvement of the training scheme, developed and implemented by FIA.

The Financial Intelligence Agency, jointly with the National Bank of Bulgaria, performs checks on the basis of: lists under UNSC resolutions, approved by the UN Security Council; EU decisions and instruments; acts and requests from the competent authorities of other states. These checks are carried out with emphasis on the enhanced coordination of efforts on regional and international level in order to strengthen the global response to terrorism (§ 4, Resolution 1373).

In all, by the end of 2004 FIA has performed inspections on 630 individuals and 420 organisations, suspected in financing of terrorism. Some of those actions have been taken in the framework of the cooperation with the US Embassy in Bulgaria (55 lists checked by the end of 2004). The result is one positive finding - one account of a listed company in a Bulgarian bank.

1.2 The CTC would appreciate knowing whether the draft Law on Forfeiture of Criminal Assets, approved by the Council of Ministers in February 2004, has become law.

The Bill passed second reading in the Parliamentary Legal Affairs Committee on 13 January 2005 and is scheduled for final debate and adoption in the Plenary of the Parliament.

1.3 The Committee would be pleased further to receive additional information about the enactment of the Code of Administrative Procedure which, according to Bulgaria's latest report, "will include relevant legislative proposals in connection with the liability of legal entities for crimes, including those related to terrorism."

In accordance with the legislative programme of the government, the draft Code of Administrative Procedure was approved by the Council of Ministers on 20 January 2005 and was introduced in the Bulgarian Parliament for debate and adoption.

After the adoption of the Code of Administrative Procedure, the existing Administrative Offences and Punishments Act will be amended as well in order to incorporate appropriate substantive and procedural provisions relating to the liability of legal entities for criminal offences committed in pursue of profit, including such offences as "*Terrorism and Financing of Terrorism*" under Article 108a, and "*Establishment or Leadership of, or Participation in, Organised Terrorist Group*" under Article 109 of the Criminal Code.

1.4 Regarding the amendment of the law on Maritime Space, Inland Waterways and Ports of the Republic of Bulgaria, the CTC would appreciate receiving a progress report on the draft regulation to implement the International Convention for the Safety of Life at Sea (SOLAS) and the International Ship and Port Facility Security Code (ISPS).

The Maritime Territory, Inland Waterways and Ports Act of the Republic of Bulgaria has been amended by the addition of new Article 60a, whereby the provisions of SOLAS Chapter XI-2 relating to the security of ships and port facilities have been incorporated.

The Minister of Transport and Communications, the Minister of Interior, and the Minister of Finance have issued joint Regulation No. 53/2004 implementing the ISPS Code. The Regulation reflects fully the Code's provisions and establishes the mechanism of interaction between the Ministry of Transport and Communications, the Ministry of Interior, and the Ministry of Finance. The following has been achieved so far:

- Port Facility Security Assessments have been made;
- Port Facility Security Plans have been developed;
- Port Facility Security Officers have been introduced and appointed by the port operators;
- Various arrangements for training of Bulgarian Port Facility Security Officers under RSO programmes (provided by Recognised Security Organisations, such as INSB and Germanische Lloyd) have been carefully examined;
- Relevant information concerning the certified ports in Bulgaria has been delivered to IMO and ESPO (European Sea Ports Organisation);
- The Security Officers of shipping companies have gone through appropriate training, and the ship crews have been briefed on their responsibilities under effective Ship Security Plans;
- All ships have been equipped with the relevant devices in accordance with the requirements. Appropriate certificates have been issued and approved Ship Security Plans are in operation.
- The Executive Agency "Maritime Administration" has designated liaison officers and has notified the shipping companies and IMO accordingly. This agency maintains a 24-hour on-line line communication service for information and specific signals from ships.

1.5 The CTC would like to receive information concerning the results of the audits that ICAO has performed on the airports of Varna and Bourgas during the course of 2004.

There were no ICAO audits of Varna and Bourgas airports in 2004.

Sofia, 11 February 2005





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I write with reference to my letter of 16 December 2004 (S/2004/1009). The Counter-Terrorism Committee has received the attached fourth report from Andorra submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(Signed) Andrey I. Denisov
Chairman

Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism



Annex

Letter dated 11 February 2005 from the Permanent Representative of Andorra to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

At the request of my Government, I have the honour to transmit to you the fourth report to be submitted by the Principality of Andorra to the Counter-Terrorism Committee (see enclosure).

My Government will be happy to provide the Committee with such additional information as it considers necessary.

(Signed) **Julian Vila Coma**
Ambassador
Permanent Representative

Enclosure

[Original: French]

Responses to the comments and questions concerning the content of the fourth report submitted pursuant to Security Council resolution 1373 (2001)

Introduction

In accordance with its obligations under paragraph 6 of Security Council resolution 1373 (2001), the Andorran Government submitted a detailed report on 21 December 2001. In response to the requests of the Committee contained in its letters of 1 April 2002 and 7 April 2003, two supplementary reports providing additional information on the issues previously addressed were submitted on 10 September 2002 and 10 May 2004, respectively.

The present report, which is the fourth report submitted by the Andorran Government, responds to the questions raised by the Committee in its letter of 15 November 2004.

Once again, the report has been prepared in close collaboration with all the Ministries concerned, namely, the Ministry of Finance, the Ministry of the Interior and Justice and the Ministry of Foreign Affairs, with the participation of the Money-Laundering Prevention Unit (UPB).

We remain entirely at the disposal of the Counter-Terrorism Committee for any further information that may be required.

1.1 The Committee would appreciate receiving progress reports on:

Complete revision of the Penal Code:

- Although work on the drafting of the new Penal Code is already finished, the Andorran Parliament still has to submit this text for approval by the absolute majority of its members.

Accession of Andorra to the twelve United Nations Conventions:

- See paragraph 1.3 below.

1.2 Has the Principality of Andorra adopted measures to prevent terrorist and other criminals from having unfettered access to wire transfers to move their funds?

Wire transfers are part of the everyday activities of banks, and for this reason the monitoring of compliance with rules and regulations governing such transfers comes under the Act on International Cooperation in Criminal Matters and Prevention of the Laundering of Money or Securities Constituting the Proceeds of International Crime.

All individuals covered by this Act whether or not they form part of the financial system, are required under article 51 (a) to be vigilant in all operations, including wire transfers which, although not defined as suspect, take place in complex or unusual conditions and do not seem to be justified economically or to

serve a lawful purpose. Such vigilance must be stepped up in the case of operations that may be linked to money-laundering.

Article 51 (c) of the Act makes it mandatory for banks and other non-banking entities of the financial system to check the identity of their clients.

In the case of physical persons, proof of identity requires presentation of an official identity document bearing a photograph and must also entail the checking of domicile and occupation.

In the case of legal entities, financial entities must demand a certificate of registration in the Business Register and identify the physical person who, in accordance with the documentation submitted, holds power of attorney.

In all cases, and pursuant to paragraph (d) of the same article, financial institutions must check promptly the identity of the true beneficiaries of the requested transaction. In this connection, UPB Regulations lay down that financial institutions must obtain all further information needed for them to be able to ascertain the identity and business of their clients as well as the origin and purpose of the operations to be carried out.

Similarly, the Regulations make it mandatory for financial institutions, again in accordance with article 51 of the Act, to demand to know and obtain proof of the identity of non-clients requesting currency exchange transactions in an amount higher than 1,250 euros or for smaller amounts repeatedly.

1.3 Has Andorra become a party to any of the international anti-terrorism instruments?

What steps have been taken by Andorra to incorporate into domestic law the provisions of these Conventions?

Since its last report, the Principality of Andorra has acceded to the following Conventions:

- International Convention against the Taking of Hostages, signed at New York on 17 December 1979;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, signed at New York on 14 December 1973;
- International Convention for the Suppression of Terrorist Bombings, signed at New York on 15 December 1997;
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970.

The instruments of accession by Andorra to the first three Conventions, approved by the Andorran Parliament on 14 April 2002 and mentioned in the last supplementary report, were deposited with the Secretariat of the United Nations on 23 September 2004 and entered into force on 23 October 2004.

The instrument of accession by Andorra to the Convention for the Suppression of Unlawful Seizure of Aircraft was deposited on 23 September with the Russian Government, on 6 October 2004 with the United States Government, and on

24 September with the Government of the United Kingdom. It entered into force on 5 November 2004.

It is also important to note that all the international conventions or treaties adopted by Andorra form an integral part of domestic legislation upon their entry into force. Article 3 of the Constitution of Andorra provides that international treaties and agreements take effect in the country's legal system from the moment of their publication in the Official Gazette of the Principality of Andorra and cannot be amended or repealed by law. It follows that Andorra fulfils its international obligations under treaties to which it is a party for the prevention of the financing of terrorism without having to adopt specific measures in its domestic legislation.

Lastly, the Parliamentary Commission that prepared the complete revision of the Penal Code gave consideration to the incorporation into the new text of all the provisions of criminal law set out in the treaties in force and in the anti-terrorism conventions. This means that, in accordance with Andorran law, the remaining conventions, whose legal and technical implications have now been fully studied, may be referred to the General Council (Parliament) for ratification upon resumption of the parliamentary session in the spring of this year.

1.4 How does Andorra ensure that there is adequate cooperation and information-sharing among the various government agencies that may be involved in investigating the financing of terrorism, including their foreign counterparts?

The Andorran Government continues to cooperate, in keeping with the provisions of articles 55 and 56 of the Act on International Cooperation in Criminal Matters and Prevention of the Laundering of Money or Securities Constituting the Proceeds of International Crime, with other equivalent foreign agencies without a pre-existing agreement with the other party. However, the financial intelligence units of some countries requested that such cooperation should be underpinned by a bilateral agreement. The Andorran Money-Laundering Prevention Unit has therefore given priority to those countries and has signed Memoranda of Understanding with the Bahamas, the Netherlands Antilles, Peru and Thailand.

1.5 Does Andorra impose controls on the cross-border movement of cash, negotiable instruments, precious stones and metals? Please also provide information concerning any relevant monetary or financial thresholds.

As regards cross-border customs controls on the initiative of Andorra, it should be noted that:

- The presence of the Andorran Customs at the legal borders of the country is effective and permanent;
- Irrespective of the treatment of merchandise declared at customs, spot checks are carried out on vehicles and persons crossing the border in order to find any undeclared or smuggled merchandise they may be seeking to import or export. This includes, in particular, precious stones and metals and other items of jewellery;
- However, the Andorran customs does not take direct action in respect of movements of cash, negotiable instruments or any other means of payment.